

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA et al.	)	
<i>ex rel.</i> Andrew White, Mark Rosenberg,	)	
and Ann Wegelin,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 1:21-CV-01239-CEF
v.	)	
	)	
RITE AID CORPORATION, et al.,	)	
	)	
Defendants.	)	

**NOTICE OF ELECTION BY THE PLAINTIFF STATES**  
**TO DECLINE INTERVENTION OR NOT INTERVENE**  
**AT THIS TIME**

Pursuant to the Virginia Fraud Against Taxpayers Act, Va. Code § 8.01-216.5(D), the Commonwealth of Virginia hereby respectfully notifies the Court of its election to decline intervention in this action. The Commonwealth of Virginia has also conferred with the Plaintiff States of Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Washington, and the District of Columbia, and they wish to join this notice and decline intervention pursuant to each of their respective state false claims act statutes or applicable law. The Plaintiff State of California does not join in the declination, and instead respectfully notifies the Court of its intention to make an intervention decision on or before the May 2, 2023 deadline pursuant to the Court's previous Order (ECF No. 27). The Plaintiff States collectively have granted authority to the Virginia Attorney General's Office to join this Notice and file on their behalf.

Although the Commonwealth of Virginia and the other Plaintiff States listed above decline to intervene, the Plaintiff States respectfully refer the Court to Va. Code § 8.01-216.5, and analogous provisions in the other Plaintiff States' respective false claims acts, which allow the relators to maintain the action in the name of the Plaintiff States; provided, however, that the action may be dismissed only if the Court and the Attorney General give written consent to the dismissal and their reasons for consenting. *See, e.g.*, 31 U.S.C. § 3730(b)(1); Va. Code § 8.01-216.5(A). Therefore, the Plaintiff States request that, should either the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the written consent of the Plaintiff States be obtained before a final ruling is issued.

Pursuant to Va. Code § 8.01-216.6(F) and analogous provisions in the other Plaintiff States' respective false claims acts, the Plaintiff States request that all pleadings filed in this action be served upon the Plaintiff States and that orders issued by the Court be sent to undersigned counsel and to the Plaintiff States. The Plaintiff States reserve their right to order any deposition transcripts and to intervene in this action for good cause at a later date, and to seek the dismissal of the relators' action or claim. The Plaintiff States also request that they be served with all notices of appeal.

Furthermore, the Maryland False Health Claims Act provides that "if the State does not elect to intervene and proceed with the action...the court shall dismiss the action." Md. Code Ann., Health Gen., § 2-604(a)(7). Accordingly, the State of Maryland requests that all claims asserted on behalf of the State of Maryland be dismissed without prejudice.

Finally, the Plaintiff States request that all other papers on file in this action remain under seal, as previously ordered by the Court (ECF No. 33), because in discussing the content and extent of the United States' and the Plaintiff States' investigation, such papers are provided by

law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed Order accompanies this Notice.

Dated: February 23, 2023

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

By: /s/ Matthew G. Howells  
Matthew G. Howells (VSB #88167)  
(admitted *pro hac vice*)  
Assistant Attorney General  
Virginia Office of the Attorney General  
Medicaid Fraud Control Unit, Civil Litigation  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219  
Tel: (804) 786-6547  
Fax: (804) 786-0807  
Email: mhowells@oag.state.va.us  
*Counsel for the Commonwealth*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2023, I caused a copy of the foregoing Notice and accompanying Proposed Order to be electronically filed with the Clerk of Court using the CM/ECF system, which will provide copies to all counsel of record.

/s/ Matthew G. Howells  
Matthew G. Howells  
Assistant Attorney General